

Thomas, Felicia

From: (b) (6)
Sent: Saturday, May 18, 2013 5:18 PM
To: Godsey, Cindi
Cc: mike_hanna@risch.senate.gov; scott.carlton@mail.house.gov; steve.schuster@ag.idaho.gov; scorkill@idl.idaho.gov; (b) (6); tim.luke@idwr.idaho.gov; EPA_Stories@Crapo.senate.gov; Woodruff, Leigh; miranda.adams@deq.idaho.gov; DeGering, Tracy
Subject: I am formally appealing the NPDES General Permit for Small Scale Suction Dredge Mining in Idaho:
Categories: Cindi Responded

EPA, Cindi Godsey

Ms. Godsey,

I am an Idaho Small Scale Suction Dredge Miner and I am writing to appeal the NPDES General Permit for Small Scale Suction Dredge Mining in Idaho.

I feel that this amounts to a full scale state-wide ban on suction dredge mining in Idaho, because of the poorly written regulations regarding, but not limited to, the Salmon River. The Idaho Dept. of Water Resources description of open/closed waters for the Salmon River were copied word for word, yet I have been denied coverage under the permit when I tried to apply.

I have no illusion that this rule was developed by formal rule-making and therefore it is either an informal rule or a hybrid rule. Neither of which carry the full force of law and are merely suggestions. No Science has been provided to show that small scale suction dredge mining harms anything in Idaho waters.

The Clean Water Act does not address Small Scale Suction Dredge Mining in Idaho, therefore it must be assumed that Congress has given the EPA no mandate to try to enforce arbitrary and capricious rules upon this activity.

In the Supreme Court case of Bi-metallic Investment Co. v State Board of Equalization it was decided that Due Process Protections are to be attached to administrative activities in which a small number of people are concerned, who are exceptionally affected by the act, in each case upon individual grounds. As independent entities, Small Scale Suction Dredge Miners are responsible for their own claim-staking, equipment, etc. As such affected parties, I demand all of the protections afforded under American Administrative Law. This rule needs to be set aside until proper comment periods and most importantly, public hearings have been held. Anything less denies the miners our rights to Due Process Protections as identified in the 14th Amendment to the Constitution of the United States. The EPA may not deprive me, as an individual, life, liberty, or property without notice and an opportunity to be heard. I submit to you that my comments, which were submitted in the proper time-frame were not considered and my right to a public hearing was denied. Unelected bureaucrats may not act in such disrespect of the law and our Constitutional rights.

Numerous Supreme Court cases have been decided since 2010 and have set a precedent that the EPA may only consider a "discharge of a pollutant", to mean just that. The EPA already knows that the Small Scale Suction Dredge Miner does not add any pollutant to the waters of Idaho, during normal operations. The same court has decided that the Clean Water Act only pertains to industrial pollutants, which are not present in Small Scale Suction Dredging.

In 1972 and in 1977, there were statements made to indicate that Congress thought that "discharge" had a very definite meaning. Specifically Congress understood "discharge of dredged materials", to mean open water disposal of material removed during the digging or deepening of navigable waterways. Senator Muskie explained that "the bill tries to free from the threat of regulation those kinds of manmade activities which are sufficiently de minimus as to merit general attention at the State and local level and little or no attention at the State and local level and little or no attention at the National level". Senator Domenici stated that "we never

intended under section 404 that the Corps of Engineers be involved in the daily lives of our farmers, realtors, people involved in forestry, anyone that is moving a little bit of earth anywhere in this country that might have an impact on navigable streams".

I am asking in this appeal that this NPDES General Permit for Small Scale Suction Dredge Mining in Idaho be set aside and stricken from the Federal Register, as it is in clear violation of Congress' intent upon passing the Clean Water Act. The Courts have held that the language of the Clean Water Act is clear enough to empower the EPA within jurisdictional guidelines. The EPA has crossed that line with this NPDES General Permit for Small Scale Suction Dredge Mining in Idaho and must now extricate itself from this activity.

Donald G. Smith

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